



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BURIAL SERVICES SECTION
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PRE-NEED TRUST AGREEMENT

In accordance with the provisions of the Tennessee Prepaid Funeral Benefits Act (the "Act"), effective January 1, 2008 and codified at Tenn. Code Ann. § 62-5-401 et seq., this agreement is entered into between _____ AND

(TRUSTEE – Cannot be an individual)

(PRE-NEED SELLER or other individual, firm, partnership, etc. selling pre-need merchandise and services)

The authority of the Trustee extends to all trust accounts, both irrevocable and revocable, that may be deposited with the Trustee and the Trustee shall be subject to the provisions of the Act, which is incorporated herein in its entirety by reference. The basis for determining the Trustee's fee (if any) will be _____ % or \$ _____ on each account and will be deducted from income earned by the trust fund.

Upon the death of the contract beneficiary, the Trustee shall pay the pre-need seller (or other provider of services or merchandise) only after being furnished with a certified copy of the death certificate of the person, or other proof of death acceptable to the Trustee, together with a copy of the statement of funeral merchandise and services, signed by the pre-need seller (or other provider of services or merchandise) and a representative of the contract beneficiary, setting forth that all terms and conditions of the pre-need funeral contract have been fully performed. The Trustee shall pay any balance remaining in the pre-need trust fund to the purchaser, the purchaser's estate, or otherwise named beneficiary.

Authorized agent for Trustee:

(PRINT NAME OF INSTITUTION)

(MAILING ADDRESS)

(CITY / STATE / ZIP CODE)

(TELEPHONE)

(SIGNATURE AND TITLE)

(DATE)

Authorized agent for Pre-need Seller (or other individual, firm, partnership, etc. selling pre-need merchandise and services):

(PRINT NAME OF ESTABLISHMENT - PRE-NEED SELLER)

(MAILING ADDRESS)

(CITY / STATE / ZIP CODE)

(TELEPHONE)

(SIGNATURE AND TITLE)

(DATE)

For your convenience, certain parts of the Tennessee Prepaid Funeral Benefits Act are reproduced below. The entire text may be found at this link: <http://www.tennesseeanytime.org/laws/>

§ 62-5-401. Short title

This part shall be known and may be cited as the “Tennessee Prepaid Funeral Benefits Act.”

§ 62-5-403. Definitions

As used in this part, unless the context requires otherwise:

(11) “Pre-need funeral trust” means funds set aside in a trust account held by a trustee to provide for a pre-need funeral contract;

(14)(A) “Trustee” means a state or national bank, federally chartered savings and loan association, state chartered trust company, or, in the reasonable discretion of the commissioner upon the terms and conditions that the commissioner may require, a securities brokerage firm licensed and in good standing with appropriate state and federal regulatory authorities.

(B) Prior to July 1, 2011, “trustee” may also mean a certified public accountant who the commissioner determines meets all of the following requirements:

- (i) The certified public accountant has served during the 2007 calendar year as the trustee for a trust account established pursuant to this part;
- (ii) The certified public accountant is covered by errors and omissions liability insurance in an amount equal to or greater than the amount held in trust; and
- (iii) The certified public accountant has complied with all previous reporting requirements required by statute and rules of the commissioner;

(C) On or after July 1, 2011, every trustee of every trust account shall be a trustee as set forth in subdivision (14)(A).

§ 62-5-407. Preneed funeral trust funds

(a) Every pre-need seller engaged in the business of selling pre-need funeral contracts funded by a trust shall establish a pre-need funeral trust fund. The trust fund shall be established by executing a written trust agreement with a trustee as defined in § 62-5-403; provided, that a pre-need seller may change the trustee of its trust fund by providing written notice to the commissioner no later than thirty (30) days prior to the change, along with evidence sufficient to the commissioner that the trustee will be able to comply with the requirements of this part. If the commissioner determines that the evidence submitted is insufficient to ensure that the trustee will be able to comply with the requirements of this part, the commissioner may refuse to allow the pre-need seller to change the trustee. If the commissioner does not object to the change of trustee within sixty (60) calendar days of receiving a request, the current trustee shall have not less than ninety (90) calendar days from the date it receives notice of the proposed change to transfer all trust assets held by the trustee to the successor trustee.

(b) If the pre-need funeral contract purchaser chooses to fund the pre-need funeral contract by a trust deposit or deposits, the pre-need seller shall deposit all funds with the trustee, to be held in trust, within fifteen (15) calendar days of receipt. The pre-need seller, at the time of making the deposit, shall furnish to the trustee the name of each pre-need funeral contract beneficiary and the amount of payment on each for which the deposit is being made. The trustee may establish a separate trust fund for each pre-need funeral contract or a single trust fund for all pre-need funeral contracts issued by a pre-need seller. The trust accounts shall be carried in the name of the pre-need seller, but accounting records shall be established and maintained for each individual pre-need funeral contract beneficiary showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned.

(c) Funds deposited in trust under a pre-need funeral contract may, with the written permission of the pre-need funeral contract purchaser and written approval of the commissioner, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. The trustee shall disclose, in writing, the terms of the prearrangement insurance policy to the pre-need funeral contract purchaser. Except as provided in this subsection (c), no funds deposited in trust with a trustee pursuant to this section shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(d) No pre-need seller, affiliate of a pre-need seller, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business may act as trustee for any pre-need funeral trust. No pre-need seller, affiliate of a pre-need seller, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business may share in the responsibilities of or direct the actions of the trustee of a pre-need funeral trust fund.

(e) It is unlawful to loan pre-need funeral trust funds to a pre-need seller, an affiliate of a pre-need seller, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business. Furthermore, the pre-need seller's interest in the trust shall not be pledged as collateral for any loans, debts, or liabilities of the pre-need seller and shall not be transferred to any person without the prior written approval from the commissioner and the trustee.

§ 62-5-408. Monies held in trust; liability; trustee duties

(a) Moneys held in a pre-need funeral contract trust shall be held in trust, both as to principal and income earned on the principal, and shall remain intact, except that the trustee shall have the right to use trust fund income to pay applicable taxes and reasonable expenses related to the administration of the trust, including reasonable trustee's fees for services rendered pursuant to the terms of the applicable trust agreement or to others for the preparation of fiduciary tax returns. In no event shall the principal be diminished.

(b) The pre-need seller shall be liable to the trustee and to third parties to the extent that income from the trust is not sufficient to pay the expenses of the trust.

(c) The trustee shall make regular valuations of assets it holds in trust and provide a report of the valuations to the pre-need seller at least annually.

(d) The trustee shall:

(1) Invest at least fifty percent (50%) of the moneys paid and placed in a pre-need funeral contract trust after January 1, 2008, in the following:

(A) Demand deposits;

(B) Savings accounts;

(C) Certificates of deposits; or

(D) Other accounts issued by financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance.

(2) For all investments, invest as prescribed in this section and in so investing, the trustee shall exercise the judgment and care under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(e) Except as otherwise provided by this part, all payments made by the purchaser of a pre-need funeral contract shall remain trust funds with a trustee or as paid insurance premiums with an insurance company, as the case may be, until the death of the pre-need funeral contract beneficiary and until full performance of the pre-need funeral contract.

§ 62-5-409. Prearrangement insurance policy or certificate; unlawful conduct; civil suits

(a) If the pre-need funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the enrollment or application form for the prearrangement insurance policy or certificate shall be submitted to the insurance company by the pre-need sales agent within fifteen (15) calendar days of receipt.

(b) It is unlawful for any life insurance company, fraternal benefit society or other similar company, association or society issuing prearrangement insurance policies, by whatever name they may be called, upon the lives of citizens of this state, to:

(1) Designate, in the policy or otherwise, the person, firm or corporation to conduct the funeral of the insured, or to organize, promote or operate any enterprise or plan, or to enter into any contract with the insured or with any other person, which plan or contract tends to limit or restrict the freedom of choice in the open market of the person or persons having the legal right of the choice regarding contracts, purchases and arrangements with reference to any part of a funeral service for the insured. Notwithstanding any other provision of this part, if the insurance company issuing the policy does not offer a funeral trust, or only offers a funeral trust for an additional charge, then the beneficiary may irrevocably assign the policy or policy benefits to a funeral establishment; provided, however, that the assignment shall not limit, or be construed as limiting, the ability of the pre-need funeral contract beneficiary or the beneficiary's lawful

representative from selecting a different funeral establishment to provide merchandise and services. If a subsequent establishment is designated, then the establishment to which the policy or policy benefits are currently assigned shall, upon written notification, promptly execute any documents necessary to transfer the assignment;

(2) Provide in the policy or otherwise that the face amount of the policy, or any loss or indemnity, that may accrue under the policy, shall be payable in anything other than legal tender of the United States and of this state to the beneficiary named in the policy or the legal representative of the insured, and any provision to the contrary shall be null and void;

(3) Enter into any contract with any funeral director, providing that the funeral director shall conduct the funeral of persons insured by the insurance company, fraternal benefit society, or similar company. This subsection (b) shall not be construed to prohibit any beneficiary under a policy from assigning the policy to a funeral establishment of the beneficiary's choice after death of the insured has occurred and liability has accrued;

(4) Enter into any contract with any citizens of this state, contracting and agreeing to furnish funeral merchandise or services upon the death of any person insured;

(5) Enter into any contract, conditioned to take effect on the death of any person, wherein the person, or the personal representative, heirs or next of kin of the person, is promised any rebate, discount or reduction in price for or on account of funeral merchandise, expenses or services by virtue of the person being issued the policy or certificate, or being designated as beneficiary in the policy, or by virtue of the person entering into the contract or being designated in the policy as the recipient of any such rebate, discount or reduction in price.

(c) Nothing in subsection (b) shall be construed to prohibit the irrevocable assignment of policy benefits to a trust set up to allow for the distribution of the benefits to the funeral home of the policyholder's choosing.

(d) No assignment of the rights or benefits under a prearrangement insurance policy shall be valid unless it is done on a form approved by the commissioner.

(e) In addition to any other penalties or remedies provided by law, the commissioner, or any person damaged or who is threatened with loss or damage, by reason of a violation of this section may maintain a suit in any court of equitable jurisdiction having jurisdiction over the parties, for injunctive relief against the violations, and the courts shall have the power to grant the relief.

§ 62-5-410. Payment after death

(a) Upon the death of the contract beneficiary, the trustee or the insurance company shall pay the funeral establishment or other provider that furnished the services or merchandise only after they have been furnished with a certified copy of the death certificate of the person, or other proof of death acceptable to the trustee or insurance company together with a copy of the statement of funeral merchandise and services, signed by the funeral director or other provider and representative of the contract beneficiary, setting forth that all of the terms and conditions of the pre-need funeral contract have been fully performed by the funeral establishment or other provider.

(b) After payment for the merchandise and services as set forth in the pre-need funeral contract, the trustee or insurance company shall pay any balance remaining in the pre-need funeral trust fund or the prearrangement insurance policy to the purchaser, the purchaser's estate or otherwise named beneficiary.

§ 62-5-411. Records; investigations; costs; disclosure

(a) Every pre-need seller shall keep and maintain, at a minimum, accurate accounts, books, and records in this state of all pre-need funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the pre-need funeral contract purchasers, the names and addresses of the pre-need funeral contract beneficiaries, the names of the trustees holding pre-need funeral trust funds, copies of the trustee's regular valuations of assets required in § 62-5-408, and the names of insurance companies issuing prearrangement insurance policies. The records shall be kept for a minimum of five (5) years after the death of the pre-need funeral contract beneficiary.

(b) The commissioner may investigate or examine the affairs of any pre-need seller or pre-need sales agent whenever it is deemed appropriate to do so. However, the commissioner shall require an annual examination to ensure that each person, firm, or corporation promising to pay or arrange for funeral services under this part will be able to perform its contract with the purchaser.

(c) The pre-need seller shall pay all costs of any examination conducted under subsection (b), including, but not limited to, the reasonable fees of actuaries, accountants, attorneys and other professionals with whom the commissioner may enter into a contract to perform examination services on behalf of the commissioner.

(d) Trustees of pre-need funeral trusts shall disclose to the commissioner any information regarding pre-need funeral trust accounts overseen by the trustee.

(e) A certified public accountant acting as a trustee pursuant to § 62-5-403(14)(B) shall submit proof of errors and omissions liability coverage with each trustee report to be filed with the commissioner.

§ 62-5-413. Administration; rules and regulations; fees; denial of applications; penalties

(a) The commissioner of commerce and insurance shall administer this part.

(b) The commissioner shall promulgate rules and regulations to effectuate the intent of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner shall collect a fee for the registration of any person, association, partnership, firm or corporation engaged in selling any agreement, contract or plan permitted under this part.

(d) The commissioner may deny an application for a registration, or may suspend, revoke, or refuse to issue or renew any registration under this part upon finding that the registrant or applicant has:

- (1) Violated this part, or any rule promulgated under this part;
- (2) Practiced fraud, deceit or misrepresentation;
- (3) Knowingly and willfully made a material misstatement in connection with an application for registration;
- (4) Been convicted by a court of competent jurisdiction of any felony, if the commissioner finds that the conviction reflects unfavorably on the fitness for the registration;
- (5) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to defraud, deceive or harm the public;
- (6) Violated any disciplinary order of the commissioner; or
- (7) Failed or refused to cooperate with any audit, inspection or investigation to determine compliance with this part or rules and regulations promulgated pursuant to this part;

(e) In addition to or in lieu of any lawful disciplinary action under this part, the commissioner may, at the commissioner's discretion, assess civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of this part, or any rule or regulation promulgated under this part. Each day of continued violation constitutes a separate violation.

(f) The commissioner is authorized to assess a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against the trustee of a pre-need trust fund required by this part, for each separate violation of this part, or of any rule or regulation promulgated under this part. Each day of continued violation constitutes a separate violation.